IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Family Court Appeal No.99 of 2006
with
Civil Application No. 7 of 2006

Shri Bhagwan Kashinath Sadakal ..Appellant

vs.

Mrs.Sushila Bhagwan Sadakal ..Respondent

Shri U.B.Nighot for appellant.
Shri R.M.Momin for respondent.

CORAM: S.B.MHASE &
Smt.NISHITA MHATRE JJ.
21st February, 2007

P.C.

1. Heard.

2. This appeal is directed against the judgment and decree passed by the Family Court No.6, Mumbai on 10th August, 2005 in Civil M.A.No.118 of 2002. This is a proceeding under the Hindu Adoption and Maintenance Act for enhancement of maintenance amount. Earlier maintenance was granted at the rate of Rs.1500/- p.m.to respondent wife and Rs.1000/- p.m. for each of the two minor sons. The said order is modified by the Court and now the appellant is directed to pay Rs.2500/- p.m. to the respondent wife Sushila and Rs.1500/-p.m. towards the maintenance of each

of his two sons and thus appellant is directed to pay Rs.5500/- per month. Having found that there is change in the circumstances the Court has passed the said order. It is a fact on record that the appellant is possessed of 32 acres of land and his income is Rs.1,50,000/- approximately. He is also having a grocery shop and cloth shop in the name and style of Yogesh General Stores at village Madh. He is possessed of two tractors which are given on rent. Apart from that he has received a compensation of some portion of the acquired land. The factual position is not disputed except stating that the appellant stays in the joint family. Thus, taking into consideration the income sources and enhanced prices of necessities of life the amount of maintenance has been enhanced as stated above. The learned Counsel submitted that the appellant is ready and willing to pay the earlier amount of maintenance. He further submitted that the sons have become major. However, there is no evidence in the present matter that one son has become major and if at all he has become major till his attainment of majority liability will survive and the fact that he has become major or not can be considered by

the executing court when the decree is put up to execution. That was not the point taken and was considered and, therefore, for the first time without amendment in the written statement it is inappropriate to consider the said point afresh. We find no substance in the appeal. Appeal is hereby rejected in limine.

3. In view of rejection of the appeal civil application does not survive and hence rejected. Interim relief if any to stand vacated.

(Smt.NISHITA MHATRE J.) **(S.B.MHASE J.)**